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**INDEPENDENT ACCOUNTANTS' REPORT
ON APPLYING AGREED-UPON PROCEDURES**

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March 31, 2006

Michael Thomas, Ed.D.
Superintendent
Capital School District
Dover, Delaware

and

Valerie Woodruff
Secretary of Education
Department of Education
Dover, Delaware

SUBJECT: CAPITAL SCHOOL DISTRICT CONSTRUCTION

We have performed the procedures enumerated below, which were agreed to by Capital School District, the State of Delaware, Department of Education and the State of Delaware, Office of Auditor of Accounts, solely to assist you in evaluating whether the School District complied with 29 Del. C. c. 75, the State of Delaware Budget and Accounting Manual, and the Department of Education's School Construction Technical Assistance Manual for the fiscal year ended June 30, 2005. This agreed-upon procedures engagement was performed in accordance with *Government Auditing Standards* [GAS (2003)] issued by the Comptroller General of the United States and the attestation standards established by the American Institute of Certified Public Accountants that have been incorporated by the GAS (2003). The School District's management is responsible for complying with 29 Del. C. c. 75, the State of Delaware Budget and Accounting Manual, and the Department of Education's School Construction Technical Assistance Manual. The sufficiency of these procedures is solely the responsibility of those parties specified in the report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Our procedures and findings are as follows:

1. We determined that the School District complied with the prior fiscal year's recommendations, if applicable, by reviewing these recommendations and verifying through inquiry and observation that the recommendation has been implemented.

There were several recommendations in the prior fiscal year.

**BARBACANE
THORNTON
& COMPANY**
CERTIFIED PUBLIC ACCOUNTANTS

STATUS OF PRIOR YEAR FINDINGS

PROCEDURE

Determine that construction project records were accurate and expenditures were made in accordance with the intent of the project scope mandated by the General Assembly, the Department of Education and the local Board of Education.

BONDING REQUIREMENTS/INTERNAL CONTROLS

AUDIT STEP

Review Capital School District's bid files to determine whether the District required each trade contractor to provide the required performance bond.

FINDING

Paragraph 8.3.1 of the Agreement between Owner And Construction Manager at Risk states, "The Construction Manager shall require each Trade Contractor to furnish performance bonds covering faithful performance of its Work and payment of obligations arising under the subcontracts. The Construction Manager shall supplement all such bonds provided to assure that the total surety obligations equal or exceed the total cost of the Work then in place or to be performed pursuant to executed subcontracts, which supplementary bonds may be obtained through the Construction Manager's usual source and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum for each subcontract."

During the review, it was disclosed that nine subcontractors were given "exempt status" and were not required to provide performance/payment bonds. Further review disclosed that in some instances the District was offered and accepted credits (by subcontractors) in lieu of having to provide the bonds as required by law. These credits had been arranged by the construction manager and were subsequently approved by Capital School District. Documentation provided by the construction manager disclosed that several of the subcontractors had not been required to provide the required bonds because those requirements had not been written into the original contract proposals.

We noted that in three cases the construction manager had "dropped the ball" and had simply forgotten to require the bonds after the contract award phase. However, correspondence reviewed suggested that the construction manager made an attempt to obtain the bonds from three subcontractors as the projects were nearing completion.

RECOMMENDATION

We recommended that Capital School District adhere strictly to the State's bid laws on future construction projects by ensuring that the construction manager is obtaining the required bonds prior to the actual start of construction.

STATUS

During our current year procedures, we noted that there were no new construction projects. Management is aware of these requirements and will adhere to these bid laws on any future construction projects. This finding is no longer applicable.

COMMINGLING OF PROJECT FUNDS

AUDIT STEP

Review Capital School District's construction project records and files (fiscal year 2002 and prior years) to determine whether expenditures were accurate and made in accordance with the intent of the project scope as mandated by the General Assembly, the Department of Education and the local Board of Education.

FINDING

During the construction phase, funds budgeted for site preparation work at Booker T. Washington Elementary School and William Henry Middle School sites were found to have been commingled. Additionally, the construction work for the two schools had been included into one bid package.

Correspondence from construction files indicated that this led to a major problem tracking and accounting for real/accurate costs associated with each school. Furthermore, per construction documentation, most of the costs associated with site preparation work were funded from the William Henry Middle School budget, and it was estimated by District officials and Bancroft construction that a total of \$1 million should be transferred from the Booker T. Washington project back to the William Henry Middle School project. Correspondence from Bancroft Construction to the District and the District's legal representative dated November 2, 2001 stated that the Booker T. Washington project had a budget overage and that a transfer of funds should be made.

A further review of construction correspondence dated May 23, 2002 indicated that the commingling of funds situation had not been corrected.

RECOMMENDATION

We recommended that Capital School District take necessary action to ensure that the accounting for construction costs at each facility can be properly accounted for and tracked by appropriation, which was the intended purpose within the referendum.

STATUS

We noted that there were no new construction projects during 2005. Management is aware of these requirements and will adhere to them on any future construction projects. This finding is no longer applicable.

EXPENDITURES AND INTERNAL CONTROLS

AUDIT STEP

Review Capital School District's construction project records and files (fiscal year 2002 and prior years) to determine whether expenditures were accurate and made in accordance with the intent of the project scope as mandated by the General Assembly, the Department of Education and the local Board of Education.

FINDING

Our review of expenditures noted that several invoices for payments submitted to the District from the architectural firm doing work at William Henry Middle School contained balances due from work previously billed. We noted that on one invoice dated December 4, 2001, a total of \$104,125 was included for charges that were billed back on July 3, 2001. The architect began adding interest charges to invoices that contained amounts for payment from previous months. We noted that in several instances the architect would delete these as time passed.

AIA Document B-141, Standard Form of Agreement Between Owner and Architect Where the Construction Manager is NOT a Constructor-Construction Manager – Advisor Edition, Article 8, Termination, Suspension or Abandonment, paragraph 8.4, states "Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial non performance and cause for termination."

Paragraph 8.5 also states that "If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice."

The District is now at odds with several of the architects who have conducted work on various phases of each project saying that things left out of schematic drawings (omissions) have resulted in at least \$500,000 in additional construction costs to the District.

In one instance, the District has withheld any further payments to an architectural firm saying that it have been overpaid the sum of \$44,000. That architectural firm contends that its seven percent fee is based on "estimated costs of the project" and that this was based on a verbal agreement between its firm and the District's legal council. Conversely, the District contends that the architectural firm was to be paid a fee based on "actual construction costs." Until resolved, the architectural firm is withholding all "as-built drawings" as a result of nonpayment. The District and the architect are moving toward arbitration in accordance with Article 7 of the AIA agreement (ARBITRATION). The final resolution may not be determined until fiscal year 2005 or fiscal year 2006.

RECOMMENDATION

We recommended that the Capital School District continue with the arbitration of this issue to a final resolution. Subsequent to a resolution of this issue, the District should obtain the "as-built drawings" from the architectural firm and forward them to the State of Delaware, Division of Archives.

STATUS

During our current year procedures, we noted that a final resolution was made between the architectural firms and Capital School District. The "as-built drawings" were sent to the State of Delaware, Division of Archives during 2005. This finding is no longer applicable.

CASH MANAGEMENT

AUDIT STEP

Review the DFMS report and update the schedule of construction projects examined and determine whether Capital School District is in compliance with Title 29, Del. Code Section 7516, titled Reversion of Local Share and Title 29, Del. Code Section 7515, titled Reversion of Unexpended State Share.

FINDING

Our review identified two school construction projects (New Elementary School and the High School Roofing Project) funded by the fiscal year 1995 and 1997 Bond Bill, respectively. Although both projects were completed, they have outstanding local fund unencumbered balances totaling \$9,675 with no authorization for fund continuance. Title 29, Del. Code Section 7516, titled Reversion of Local Share states that "Any sum of money which has been appropriated by any local school district under a school construction bond authorization act which remains unexpended 1 year after pupil occupancy of any school building constructed under the school construction bond authorization act authorizing the construction shall be deposited to the debt service account of the school district...". This finding is due to management oversight.

RECOMMENDATION

We recommended that the District revert the \$9,675 to its Local Debt Service Account.

STATUS

During our current year procedures, we noted that as of June 30, 2005, the \$9,675 balance of outstanding local fund unencumbered funding had not been adjusted. However, the funding was reverted to the District's local debt service account on August 19, 2005. This finding is no longer applicable.

2. We determined that prior fiscal year and fiscal year 2005 construction project records were accurate and expenditures were made in accordance with the intent of the project scope mandated by the General Assembly, the Local Board of Education and the Department of Education by applying the procedures described in the construction program checklist prepared by the State of Delaware, Office of Auditor of Accounts.

Our procedures disclosed no instances of noncompliance that resulted in adjustments or findings and recommendations.

3. We reviewed the School District's Schedule of Construction Projects Examined (See Exhibit A) pertaining to all activity for fiscal year 2005 and determined that this information was accurate and complete.

We agreed current year expenditures and unspent balances to the DFMS cumulative budgetary activity report for June 30, 2005. In addition, we verified funding amounts against certificates of necessity authorizing such amounts.

Our procedures disclosed no instances of noncompliance that resulted in adjustments or findings and recommendations.

The results of our procedures were discussed and fully explained to Mr. Sean Sokolowski at a conference held on March 31, 2006.

We were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the School District's compliance with 29 Del. C. c. 75, the State of Delaware, Budget and Accounting Manual, and the Department of Education's School Construction Technical Assistance Manual. Accordingly, we did not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended for the information and use of the School District management and Board Members, Department of Education, Office of the Governor, Office of Controller General, Office of Attorney General, Office of Management and Budget, Department of Finance and Office of Auditor of Accounts, and is not intended to be and should not be used by anyone other than these specified parties. However, under 29 Del. C., Section 10002(d), this report is a public record and its distribution is not limited.

Barbacane, Thornton & Company
BARBACANE, THORNTON & COMPANY

Enclosure

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CAPITAL SCHOOL DISTRICT
SCHEDULE OF CONSTRUCTION PROJECTS
FISCAL YEAR 2005

Project Name	Fiscal Year	Original Funding Amount	Deauthorization/ Funding Amount	Total Project Funding To Date	Expended Current FY	Expended Prior FY	Total Project Expended To Date	Total Unspent at 6/30/05
New Elementary School	95	5,637,300	-	5,637,300	1,537	5,635,763	5,637,300	-
Dover High School Renovations	97	10,868,100	(19,051)	10,849,049	8,138	10,840,911	10,849,049	-
	00	241,200	-	241,200	-	241,200	241,200	-
	01	1,843,400	-	1,843,400	-	1,843,400	1,843,400	-
	02	1,842,500	(1,335,775)	506,725	-	506,725	506,725	-
Booker T. Washington Elem School Renovations	00	540,700	-	540,700	-	540,700	540,700	-
	01	3,773,700	(3,059)	3,770,641	134,180	3,636,461	3,770,641	-
	02	3,773,900	(694,092)	3,079,808	144,328	2,935,480	3,079,808	-
	03	150,000	(15,322)	134,678	88,834	-	88,834	45,844
Kent County Comm. School Renovations	00	208,800	-	208,800	-	208,800	208,800	-
	01	1,672,200	-	1,672,200	32,069	1,602,597	1,634,666	37,534
	02	1,519,900	-	1,519,900	977,194	284,389	1,261,583	258,317
	04	1,615,900	-	1,615,900	271,502	-	271,502	1,344,398
Central Middle School Renovations	00	879,300	-	879,300	-	879,300	879,300	-
	01	5,974,000	935,762	6,909,762	166,102	6,743,660	6,909,762	-
	02	7,466,600	706,127	8,172,727	265,973	7,906,754	8,172,727	-
	03	200,000	(50,000)	150,000	21,192	128,808	150,000	-
	05	228,000	-	228,000	228,000	-	228,000	-
Dist. Maintenance Bldg. Renovations	00	714,900	(646,489)	68,411	5,301	63,110	68,411	-
East Dover Elementary Renovations	00	4,057,000	(105,879)	3,951,121	92,328	3,858,793	3,951,121	-
South Dover Elementary Renovations	00	3,886,700	(169,593)	3,717,107	25,439	3,691,668	3,717,107	-
Wm. Henry Middle School Renovations	00	695,200	-	695,200	-	695,200	695,200	-
	01	5,313,400	273,015	5,586,415	310,650	5,275,765	5,586,415	-
	02	5,313,900	231,490	5,545,390	772,022	4,773,368	5,545,390	-
	03	266,667	(66,667)	200,000	123,533	76,467	200,000	-
Fairview Elementary Renovate/Additions	00	212,800	(99,511)	113,289	-	113,289	113,289	-
	01	1,704,800	(6,119)	1,698,681	-	1,698,681	1,698,681	-
	02	1,549,400	248,472	1,797,872	22,732	1,775,140	1,797,872	-
Hartly Elementary Renovate/Additions	00	3,668,700	65,946	3,734,646	1,676	3,732,970	3,734,646	-

Project Name	Fiscal Yea	Original Funding Amount	Deauthorizatio n/Funding Amount	Total Project Funding To Date	Expended Current FY	Expended Prior FY	Total Project Expended To Date	Total Unspent at 6/30/05
Towne Point Elementary Renovate/Additions	00	210,600	(102,643)	107,957	-	107,957	107,957	-
	01	1,609,400	145,553	1,754,953	-	1,754,953	1,754,953	-
	02	1,609,300	136,484	1,745,784	25,601	1,720,183	1,745,784	-
Demolish District Office	02	684,000	(677,460)	6,540		6,540	6,540	-
Totals		79,932,267	(1,248,811)	78,683,456	3,718,331	73,279,032	76,997,363	1,686,093